



DONATE A CAR *Change a life!*

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GoodNewsMountaineerGarage.com /goodnews.m.garage

July 21, 2020

Mark S. Morton
Legal Division
West Virginia State Tax Department
PO Box 1005
Charleston, WV 25324

By email: taxlegal@wv.gov

Re: Comments on the Proposed Regulations relating to –
Tax Credit for Providing Vehicles to Low-Income Workers, § 11-13FF

Dear Mr. Morton:

Please accept these written comments regarding the proposed regulations¹ implementing the tax credit created by HB 4969 in 2020, codified in W.V. Code § 11-13FF.

Background on Good News Mountaineer Garage. We submit these comments from the perspective of being a non-profit organization in West Virginia that intends to operate a program providing the services described in the statute. Good News Mountaineer Garage (GNMG) has been operating as a non-profit, with office in Charleston and Morgantown. Our mission is to provide reliable vehicles to low-income West Virginians so that they can access work, or critical educational opportunities to move off welfare, and support themselves and their families. Our mechanics take old cars and trucks donated to us and transform them into reliable, safe, roadworthy vehicles our clients can use to climb out of poverty. Especially in West Virginia, access to a vehicle is the critical linchpin generally needed to obtain and keep an education, access health care, and commute to otherwise unavailable employment. Our work and our cars set our clients on the road to economic independence that, in turn, leads them to safer housing, improved health care, and access to other necessities within our community, that many of us often take for granted. Since we began in 2003, we have provided over 3000 vehicles to needy West Virginians.

Comments. We very much appreciate the care that was taken in writing these proposed regulations to ensure both that the intent of the legislature was carefully followed, but also that the low-income workers beneficiaries of the tax credit will be protected.

A. Primary Concerns. Generally, the proposed regulations carry out the intentions of the legislature, although we have a number of recommendations to facilitate the implementation of the program described in the statute. These recommendations are set in Section B, below.

¹ The proposed regulations can be found here: <http://apps.sos.wv.gov/adlaw/csr/ruleview.aspx?>

However, we have three principal concerns, that unless addressed could threaten, or significantly undermine, the viability of the program:

1. **§110-13FF-4. Taxes: § 4.1.** Under § 4.1 of the regulation, it appears that sales tax will be assessed on the transfer of a vehicle to both the beneficiaries of the program contemplated by the new statute, but also on the free vehicles that GNMG currently provide to recipients of welfare (funded by the WV Department of Human Resources), or to persons referred by the WV state agency Jobs and Hope, as well as the beneficiaries of the tax credit just created by the legislature. **This would be a major and significant change in procedure, that is nowhere authorized in the statute.** All three of GNMG's programs are funded by the state to create work opportunities for poor residents of the state. We have never before had to pay taxes on the vehicles that we provide free, and if required to do so in the future, it would significantly cut into our budget and reduce the number of vehicles that we are able to provide to help lift these workers out of poverty.

In lieu of the language in the proposed regulations which would create a statutorily unauthorized burden on the recipients of state-funded programs to assist them, we urge that the following (new language is in italics):

4.1 Consumers sales tax. – The consumers sales tax imposed on the sale of a motor vehicle by W. Va. Code §11-15-3c shall *not* apply to the transfer of a *vehicle donated or sold* vehicle to a low-income worker by a qualified charitable organization *regardless of whether when there is no any* consideration paid for the vehicle. *When a vehicle is sold by a dealer through the program run by qualified charitable organization, the amount of the consumer sales tax charged shall be equal to the amount paid by the low-income worker.* as provided in W.Va. Code §17A-3-4(b)(1) & (2).

2. **§110-13FF-4. Taxes: § 4.2.** Under § 4.2 of the regulation, it appears to be contemplated that GNMG will owe *ad valorem* taxes on the vehicles it has in stock. As a charitable organization, GNMG does not currently owe any taxes. Such an imposition of taxes represents a significant—and potentially debilitating—change in the law that would undermine the purposes and effectiveness of the statute and the intent of the legislature and all of our programs. Further, there is nothing in the underlying statute that authorizes such a change in the law. Therefore, we urge that this subsection be **deleted** altogether.
3. **§110-13FF-10. Claiming the credit. § 10.4 Dealer Warranty.** We appreciate the interest of the tax department in assuring that the vehicles delivered through the program will work for the low-income participants. However, this language existed in an early draft of the legislation and was specifically removed in the legislative process. There is now nothing in the underlying statute that authorizes this requirement. Additionally, automobile dealers have indicated that they would not participate in the program if it

requires a warranty. Lack of dealer participation and cooperation could threaten the viability of the entire program created by the new statute.

Moreover, GNMG has a robust system in place of evaluating—and fixing when necessary—donated vehicles. GNMG will use these experienced mechanics to review the vehicles to be sold through the program, to ensure as much as reasonably possible, that vehicles are reliable and in good mechanical condition. We do recommend some additional protections be added to the Seller’s Certification in Section §110-13FF-10. These suggestions are detailed in section (B)(9) of these comments, below.

Finally, the statute does provide some protection regarding warranties, in § 11-13FF-5, which is not currently referenced in the proposed regulations. This statutory provision ensures that a vehicle sold through the program, which would otherwise be subject to the minimum warranty required by WV law, is not *excluded* from that requirement just because of the reduction in price provided by the subsidy created by the tax credit. To implement this statutory language, we recommend that § 10.4 be rewritten as follows:

10.4. Dealer Warranty. – In addition to the certifications made above, a dealer selling a used vehicle under a program administered by a qualified charitable organization shall provide, in a separate writing, an express warranty covering the full cost of both parts and labor necessary to repair any defect in the vehicle that affects the vehicle’s safety or operation for a minimum period of ninety days or thirty thousand miles, whichever is greater. *Notwithstanding any other provision of this code to the contrary, the fair market value of the vehicle and not the sales price shall be used to determine the applicability of §46A-6-107a(a)(3)(A) of this code to any vehicle the sale of which qualifies for a tax credit as provided by these regulations.*

B. Secondary Concerns. The issues addressed in this section are also important, albeit more relevant to clarity of the regulations and the smooth operating of the program. They are set out below in the order in which they appear in the regulations:

1. §110-13FF-2. Definitions. § 2.2.2. “Below-market loan”. This language should be clarified to ensure that the offered rate is not simply 1 or 2% lower than the prevailing rate offered in similar transactions, but rather, a meaningful reduction in rates. We recommend the following change to the language:

2.2.2. “Below-market loan” means a loan issued by a cooperating financial institution to a low-income worker for the purchase of a vehicle, which rate shall be *substantially the same as that offered to prime borrowers*, lower than the current prevailing state average rate for similar transactions, taking into consideration the credit worthiness of the borrower and the suitability of the vehicle, as determined by a qualified charitable organization, and may not include any origination fee, points, investigation fees, or other similar finance charges requiring prepayment by the purchaser.

2. **§110-13FF-2. Definitions. § 2.2.7. “Federal poverty level”**. This section refers to a special federal poverty level applicable to the state of West Virginia. The federal poverty level is a nationwide calculus applicable to the size of the household and is not dependent on the state in which the household resides. We recommend the following change to the language:

2.2.7. “Federal poverty level” means the amount ~~determined for the State of West Virginia~~ in the U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs, issued each year in the Federal Register by the Department of Health and Human Services (HHS).

3. **§110-13FF-2. Definitions. § 2.2.8. “Low-income worker”**. The current definition does not clearly allow a participant to be self-employed. This should be specifically permitted. We recommend the following change to the language:

2.2.8. “Low-income worker” means a person engaging in any gainful income generating activity whose aggregate household income is 200 percent or less of the federal poverty level. For purposes of this rule, “low-income worker” may also include part-time workers, seasonal employees, contract workers, ***persons who are self-employed***, or an unemployed person who has been offered and has accepted employment contingent on that person’s obtaining suitable transportation to the place of employment.

4. **§110-13FF-2. Definitions. § 2.2.11. “Program value”**. This definition is duplicative with the language in §110-13FF-7, which provides clearer language. We recommend that the definition in this section be replaced with the language in the later section, and that the later section be deleted. As a result, we recommend the following changes to the language in this section:

~~2.2.11. “Program value” means the fair market value of a vehicle as determined by the qualified charitable organization, based on the retail values shown in a nationally accepted used car guide and the suitability of the vehicle to its program.~~ ***of a donated vehicle shall be the fair market value of that vehicle as determined by the qualified charitable organization, based on the retail values shown in a nationally accepted used car guide, and the suitability of the vehicle for the program, taking into consideration the condition of the vehicle, and allowing for the cost of any needed repairs to the vehicle.***

5. **§110-13FF-2. Definitions. § 2.2.12.c.3. (Services Provided by Program)**. Section 11-13FF-1(5)(C)(ii) requires the program to offer “financial counseling, and other training and assistance” to low income workers to meet the terms of the loans. The proposed regulation does not require all of these separate components. GNMG’s program will offer a) robust financial training, b) individual counseling, c) referral to available

government and community resources, and d) financial assistance on a limited basis; all designed to assist the participants with meeting their loan obligations. At the least, the statutory language should be replicated in the regulation. We recommend that the following changes to the language in this section:

2.2.12.c.3. Provides financial **training**, counselling **and assistance** to low-income workers to assist them in obtaining a suitable vehicle for commuting to their employment at no cost, or at a cost that is affordable to the worker.

6. **§110-13FF-7. Valuation of donated vehicles.** As described in paragraph 4, above, this instruction provides a better definition than included in the Definitions section. We recommend that the definition for “program value” be changed to use this language, and that this entire section be **deleted** as unnecessary and duplicative.
7. **§110-13FF-8. Valuation of vehicles sold by dealers.** There is no reason for the determination of the program value of new or used vehicles to be any different from each other, or from the determination of donated vehicles. We recommend that this entire section be **deleted** as unnecessary and duplicative.
8. **§110-13FF-9. Calculation of the credit.** This entire section is also duplicative, resulting in likely confusion; the calculation of the credit for both donated vehicles and vehicles sold through dealers is properly dealt with in §110-13FF-3. This section is unnecessary and should **deleted**.
9. **§110-13FF-10. Claiming the credit. § 10.3 Seller’s Certification.** While we, unfortunately, must recommend that the requirement for the dealer’s warranty in § 10.4 must be dropped, else we will have no dealer participation in the program, in order to ensure dealer participation, we also acquiesce to another request from the dealers to dilute the requirement for performing safety recalls, to only simply requiring the dealer to inform the program that there is a pending recall. However, as explained in section (A)(3) above, GNMG has the capacity to perform a wholistic and effective mechanical review of all program cars. However, we do recommend an additional certification that is appropriate to require from dealers: that the vehicle have passed a West Virginia safety inspection. In sum, we recommend that the section on Seller’s Certification be rewritten as follows:

Seller’s Certification

By signing below, the seller of the above vehicle certifies that, having made a diligent search, it finds that the vehicle:

- **Has passed a West Virginia safety inspection.**
- **Has not been reported as stolen and not recovered;**
- **Has informed the program whether the vehicle is ~~not~~ subject to any unperformed**

safety recalls;

- Has not been reported as a total loss as the result of an accident;
- Has not been flood-damaged;
- Has not been junked or salvaged;

10. **§110-13FF-12. Suitability of vehicles.** As explained above, GNMG has the capability to use its own mechanics, or those it contracts with, to repair vehicles and bring them up to standards appropriate to be sold through the program. Therefore, the program should be permitted to certify that program vehicles can be repaired by the program to make them suitable. We recommend the following change in the proposed regulation to allow this:

§110-13FF-12. Suitability of vehicles.

12.1. The suitability of a vehicle for use in the program shall be determined by the qualified charitable organization, based on the following criteria:

12.1.1. The vehicle must be in good, safe, reliable working condition, as determined by the qualified charitable organization, ***or can be repaired by the qualified charitable organization or its agents, to be so.***

12.1.2. The vehicle must be determined by the qualified charitable organization to be affordable to the program participant.

11. **§110-13FF-13. Duties of the qualified charitable organization.** The requirements imposed on the qualified charitable organization are basically fine, except that—

- a. the low-income worker participating in the program should be free to find her own vehicle through a dealer and apply for the purchase through the program, without requiring that no vehicle be available in the organization's stock;
- b. the charitable organization should only be required to negotiate with the dealer if it is necessary (it is hoped that some dealers will be such willing parties to these transactions that negotiations may not be necessary);
- c. there is no reason to limit the search for a suitable vehicle to the "local" market; it can be a statewide search (which is made fairly easy in this era of internet shopping), such that the word "local" should be replaced by the word "statewide"; and
- d. it should be required that the charitable organization must enter into an arrangement with the financial institution to provide below-market financing—otherwise many of the advantages of the tax credit subsidy would be lost on high rate financing.

As a result, we recommend the following changes to this section:

§110-13FF-13. Duties of the qualified charitable organization.

13.1. The qualified charitable organization operating a program for distribution of vehicles under this rule shall assist program participants by:

13.1.1. Providing, for no consideration, or at a price below the fair market value and affordable to the program participant, a suitable vehicle from the qualified charitable organization's stock or inventory of donated vehicles; *or*

13.1.2. If *the participant chooses to purchase a vehicle deemed suitable by the qualified charitable organization through a dealer*, ~~no suitable donated vehicle is available~~, the qualified charitable organization shall:

13.1.2.a. Guide the program participant in locating a suitable vehicle for purchase within the ~~local statewide~~ new or used car market;

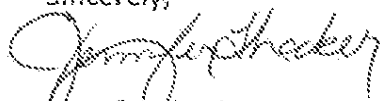
13.1.2.b. Negotiate with and on behalf of the program participant as necessary to obtain a suitable vehicle at a price determined to be affordable to the program participant by the qualified charitable organization;

13.1.2.c. Negotiate with and on behalf of the program participant as necessary to obtain below-market financing from a cooperating financial institution for the purchase of a vehicle determined to be suitable for the program participant by the qualified charitable organization.

13.2. Qualified charitable organizations ~~may~~ *shall* enter into agreements with cooperating financial institutions to provide below-market financing for the purchase of suitable vehicles for program participants.

We very much appreciate your consideration of these points. Along with our consultant, Margot Saunders (304-553-1123 msaunders@nclc.org)—an attorney with the National Consumer Law Center, we would be happy to meet with you to discuss them with you further. Thank you.

Sincerely,



Jennifer Thacker
Executive Director
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jthacker@goodnews mountaineergarage.com

West Virginia Automobile Dealers Association



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July 21, 2020

Mark S. Morton
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Charleston, WV 25324

Dear Mr. Morton,

Please accept the below written comments for 110 CSR 13FF.

10.3 Seller's Certification

On page 5, 10.3 under "Seller's Certification" the second bullet point states: "Is not subject to any unperformed safety recalls,".

In many instances, recalls are issued by manufacturers for reasons other than safety. For example, there have been recalls due to an incorrect phone number for the National Highway Traffic Safety Administration (NHTSA) listed in the vehicle owner's manual. Also, recalls have been issued for peeling stickers on the driver and passenger visors. Not all recalls are "safety" related.

In addition, recalls are paid for by the manufacturer to the dealer performing the recall. WV dealers have every incentive to perform a recall if they can obtain the necessary parts. If a dealer can perform a recall they will. WVADA would suggest that the following language be replaced with:

- **"Has informed the program participant whether the vehicle is subject to any unperformed safety recalls;"**

10.4. Dealer Warranty

On page 6, 10.4 Dealer Warranty, exceeds the scope of the authorizing statute. Originally, H.B. 4969 contained provisions requiring warranties be placed on vehicles in this program; however, the language was ultimately removed out of fear that this would discourage dealers from participating in the program. WVADA would suggest striking 10.4 in its entirety and inserting the following language from H.B. 4969:

West Virginia Automobile Dealers Association



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“The fair market value of the vehicle and not the sales price shall be used to determine the applicability of §46A-6-107a(a)(3)(A) to any vehicle the sale of which qualifies for a tax credit as provided by this rule.”

WVADA greatly appreciates the opportunity to submit these comments and your consideration of the aforementioned. I would be happy to discuss in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Wyrick", is written over a horizontal line.

Jared Wyrick
President, WVADA

PUBLIC COMMENTS AND RESPONSES

110CSR13FF

TAX CREDIT FOR PROVIDING VEHICLES TO LOW-INCOME WORKERS

The State Tax Division received comments from Mr. Jared Wyrick, President of the West Virginia Automobile Dealers Association ("WVADA"), and Ms. Jennifer Thacker, Executive Director of Good News Mountaineer Garage ("GNMG"), which are summarized with the Tax Division's responses below:

WVADA Comments regarding Section 110-13FF-10.3.

Comment:

On page 5, 10.3 under "Seller's Certification" the second bullet point states "Is not subject to any unperformed safety recalls,"

In many instances, recalls are issued by manufacturers for reasons other than safety. For example, there have been recalls due to an incorrect phone number for the National Highway Traffic Safety Administration (NHTSA) listed in the vehicle owner's manual. Also, recalls have been issued for peeling stickers on the driver and passenger visors. Not all recalls are "safety" related.

In addition, recalls are paid for by the manufacturer to the dealer performing the recall. WV dealers have every incentive to perform a recall if they can obtain the necessary parts. If a dealer can perform a recall they will. WVADA would suggest that the following language be replaced with:

- "Has informed the program participant whether the vehicle is subject to any unperformed safety recalls;"

Response:

The State Tax Division has made this change in the agency adopted rule.

WVADA Comments regarding Section 110-13FF-10.4.

Comment:

On page 6, 10.4 Dealer Warranty, exceeds the scope of the authorizing statute. Originally, H.B. 4969 contained provisions requiring warranties be placed on vehicles in this program; however, the language was ultimately removed out of fear that this would discourage dealers from participating in the program. WVADA would suggest striking 10.4. in its entirety and inserting the following language from H.B. 4969:

"The fair market value of the vehicle and not the sales price shall be used to determine the applicability of §46A-6-107a(a)(3)(A) to any vehicle the sale of which qualifies for a tax credit as provided by this rule."

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG Comments regarding Section 110-13FF-4.

Comment:

10-3FF-4. Taxes: § 4.1. Under § 4.1 of the regulation, it appears that sales tax will be assessed on the transfer of a vehicle to both the beneficiaries of the program contemplated by the new statute, but also on the free vehicles that GNMG currently provide to recipients of welfare (funded by the WV Department of Human Resources), or to persons referred by the WV state agency Jobs and Hope, as well as the beneficiaries of the tax credit just created by the legislature. **This would be a major and significant change in procedure, that is nowhere authorized in the statute.** All three of GNMG's programs are funded by the state to create work opportunities for poor residents of the state. We have never before had to pay taxes on the vehicles that we provide free, and if required to do so in the future, it would significantly cut into our budget and reduce the number of vehicles that we are able to provide to help lift these workers out of poverty.

In lieu of the language in the proposed regulations which would create a statutorily unauthorized burden on the recipients of state-funded programs to assist them, we urge that the following (new language is in italics):

4.1 Consumers sales tax. - The consumers sales tax imposed on the sale of a motor vehicle by W. Va. Code §11-15-3c shall *not* apply to the transfer of a *vehicle donated or sold* ~~vehicle~~ to a low-income worker by a qualified charitable organization ***regardless of whether when there is no any*** consideration paid for the vehicle. ***When a vehicle is sold by a dealer through the program run by qualified charitable organization, the amount of the consumer sales tax charged shall be equal to the amount paid by the low-income worker.*** ~~as provided in W. Va. Code §17A-3-4(b)(1) & (2).~~

Response:

The Tax Division has changed the language of section 4 of the rule to read:

The consumers sales tax on the donation or sale of a motor vehicle under this rule shall be applied in accordance with the provisions of 91 C.S.R. 9, Collection of Sales Tax on the Sale of a Vehicle.

GNMG Comment on Section 110-13FF-4.2.:

Comment:

§110-13FF-4. Taxes: § 4.2. Under § 4.2 of the regulation, it appears to be contemplated that GNMG will owe *ad valorem* taxes on the vehicles it has in stock. As a charitable organization, GNMG does not currently owe any taxes. Such an imposition of taxes represents a significant-and potentially debilitating-change in the law that would undermine the purposes and effectiveness of the statute and the intent of the legislature and all of our programs. Further, there is nothing in the underlying statute that authorizes such a change in the law. Therefore, we urge that this subsection be **deleted** altogether.

Response:

The Tax Division has deleted section 4.2. from the rule, as the underlying statute does not address the issue of property taxes, and such taxes are adequately dealt with elsewhere in the Code.

GNMG Comments regarding Section 110-13FF-10.4.

Comment:

§110-13FF-10. Claiming the credit. § 10.4 Dealer Warranty. We appreciate the interest of the tax department in assuring that the vehicles delivered through the program will work for the low-income participants. However, this language existed in an early draft of the legislation and was specifically removed in the legislative process. There is now nothing in the underlying statute that authorizes this requirement. Additionally, automobile dealers have indicated that they would not participate in the program if it requires a warranty. Lack of dealer participation and cooperation could threaten the viability of the entire program created by the new statute.

Moreover, GNMG has a robust system in place of evaluating - and fixing when Necessary - donated vehicles. GNMG will use these experienced mechanics to review the vehicles to be sold through the program, to ensure as much as reasonably possible, that vehicles are reliable and in good mechanical condition. We do recommend some additional protections be added to the Seller's Certification in Section §110-13FF-10. These suggestions are detailed in section (8)(9) of these comments, below. Finally, the statute does provide some protection regarding warranties, in § 11-13FF-5, which is not currently referenced in the proposed regulations. This statutory provision ensures that a vehicle sold through the program, which would otherwise be subject to the minimum warranty required by WV law, is not excluded from that requirement just because of the reduction in price provided by the subsidy created by the tax credit. To implement this statutory language, we recommend that § 10.4 be rewritten as follows:

10.4. Dealer Warranty. ~~In addition to the certifications made above, a dealer selling a Used vehicle under a program administered by a qualified charitable organization shall Provide, in a separate writing, an express warranty covering the full cost of both parts and labor necessary to repair any defect in the vehicle that affects the vehicle's safety or operation for a minimum period of ninety days or thirty thousand miles, whichever is greater.~~ Notwithstanding any other provision of this code to the contrary, the fair market value of the vehicle and not the sales price shall be used to determine the applicability of §46A-6-107a(a)(3)(A) of this code to any vehicle the sale of which qualifies for a tax credit as provided by these regulations.

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG Comments regarding Section 110-13FF-2.2.2.

Comment:

§110-13FF-2. Definitions. § 2.2.2. "Below-market loan".

This language should be clarified to ensure that the offered rate is not simply 1 or 2% lower than the prevailing rate offered in similar transactions, but rather, a meaningful reduction in rates. We recommend the following change to the language:

2.2.2. "Below-market loan" means a loan issued by a cooperating financial institution to a low-income worker for the purchase of a vehicle, which rate shall be substantially the same as that offered to prime borrowers, lower than the current prevailing state average rate for similar transactions, taking into consideration the credit worthiness of the borrower and the suitability of the vehicle, as determined by the qualified charitable organization, and may not include any origination fee, points, investigation fees, or other similar finance charges requiring prepayment by the purchaser.

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG Comments regarding Section 110-13FF-2.2.7.

Comment:

Definitions. § 2.2.7. "Federal poverty level". This section refers to a special federal poverty level applicable to the state of West Virginia. The federal poverty level is a nationwide calculus applicable to the size of the household and is not dependent on the state in which the household resides. We recommend the following change to the language:

2.2.7. "Federal poverty level" means the amount ~~determined for the State of West Virginia~~ in the U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs, issued each year in the Federal Register by the Department of Health and Human Services (HHS).

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG Comments regarding Section 110-13FF-2.2.8.

Comment:

§110-13FF-2. Definitions. § 2.2.8. "Low-income worker". The current definition does not clearly allow a participant to be self-employed. This should be specifically permitted. We recommend the following change to the language:

2.2.8. "Low-income worker" means a person engaging in any gainful income generating activity whose aggregate household income is 200 percent or less of the federal poverty level. For purposes of this rule, "low-income worker" may also include part-time workers, seasonal employees, contract workers, persons who are self-employed, or an unemployed person who has been offered and has accepted employment contingent on that person's obtaining suitable transportation to the place of employment.

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG comments regarding §110-13FF-2.2.11.

Comment:

§110-13FF-2. Definitions. § 2.2.11. "Program value". This definition is duplicative with the language in §110-13FF-7, which provides clearer language. We recommend that the definition in this section be replaced with the language in the later section, and that the later section be deleted. As a result, we recommend the following changes to the language in this section:

2.2.11. "Program value" ~~means the fair market value of a vehicle as determined by the qualified charitable organization, based on the retail values shown in a nationally accepted used car guide and the suitability of the vehicle to its program.~~ of a donated vehicle shall be the fair market value of that vehicle as determined by the qualified charitable organization, based on the retail values shown in a nationally accepted used car guide, and the suitability of the vehicle for the program, taking into consideration the condition of the vehicle, and allowing for the cost of any needed repairs to the vehicle.

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG comments on §110-13FF-2.2.12.c.3. (Services Provided by Program).

Comment:

Section 11-13FF-1(5)(C)(ii) requires the program to offer "financial counseling, and other training and assistance" to low income workers to meet the terms of the loans. The proposed regulation does not require all of these separate components. GNMG's program will offer a) robust financial training, b) individual counseling, c) referral to available government and community resources, and d) financial assistance on a limited basis; all designed to assist the participants with meeting their loan obligations. At the least, the statutory language should be replicated in the regulation. We recommend that the following changes to the language in this section:

2.2.12.c.3. Provides financial training, counselling and assistance to low-income workers to assist them in obtaining a suitable vehicle for commuting to their employment at no cost, or at a cost that is affordable to the worker.

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG comment on §110-13FF-7. Valuation of donated vehicles.

Comment:

As described in paragraph 4, above, [GNMG comment on §110-13FF-2.2.11., definition of "Program value"] this instruction provides a better definition than included in the Definitions section. We recommend that the definition for "program value" be changed to use this language, and that this entire section be **deleted** as unnecessary and duplicative.

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG comment on §110-13FF-8. Valuation of vehicles sold by dealers.

Comment:

There is no reason for the determination of the program value of new or used vehicles to be any different from each other, or from the determination of donated vehicles. We recommend that this entire section be **deleted** as unnecessary and duplicative.

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG comment on §110-13FF-9. Calculation of the credit.

Comment:

This entire section is also duplicative, resulting in likely confusion; the calculation of the credit for both donated vehicles and vehicles sold through dealers is properly dealt with in §110-13FF-3. This section is unnecessary and should be deleted.

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG comment on §110-13FF-10.3. Seller's Certification.

Comment:

While we, unfortunately, must recommend that the requirement for the dealer's warranty in §10.4 must be dropped, else we will have no dealer participation in the program, in order to ensure dealer participation, we also acquiesce to another request from the dealers to dilute the requirement for performing safety recalls, to only simply

requiring the dealer to inform the program that there is a pending recall. However, as explained in section (A)(3) above, GNMG has the capacity to perform a wholistic and effective mechanical review of all program cars. However, we do recommend an additional certification that is appropriate to require from dealers: that the vehicle have passed a West Virginia safety inspection. In sum, we recommend that the section on Seller's Certification be rewritten as follows:

Seller's Certification

By signing below, the seller of the above vehicle certifies that, having made a diligent search, it finds that the vehicle:

- Has passed a West Virginia safety inspection.
- Has not been reported as stolen and not recovered;
- Has informed the program whether the vehicle ~~is not~~ is subject to any unperformed safety recalls;
- Has not been reported as a total loss as the result of an accident;
- Has not been flood-damaged;
- Has not been junked or salvaged; ...

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG comment on §110-13FF-12. Suitability of vehicles.

Comment:

As explained above, GNMG has the capability to use its own mechanics, or those it contracts with, to repair vehicles and bring them up to standards appropriate to be sold through the program. Therefore, the program should be permitted to certify that program vehicles can be repaired by the program to make them suitable. We recommend the following change in the proposed regulation to allow this:

§110-13FF-12. Suitability of vehicles.

12.1. The suitability of a vehicle for use in the program shall be determined by the qualified charitable organization, based on the following criteria:

12.1.1. The vehicle must be in good, safe, reliable working condition, as determined by the qualified charitable organization, or can be repaired by the qualified charitable organization or its agents, to be so.

12.1.2. The vehicle must be determined by the qualified charitable organization to be affordable to the program participant.

Response:

The State Tax Division has made this change in the agency adopted rule.

GNMG comment on §110-13FF-13. Duties of the qualified charitable organization.

Comment:

The requirements imposed on the qualified charitable organization are basically fine, except that:

- a. the low-income worker participating in the program should be free to find her own vehicle through a dealer and apply for the purchase through the program, without requiring that no vehicle be available in the organization's stock;
- b. the charitable organization should only be required to negotiate with the dealer if it is necessary (it is hoped that some dealers will be such willing parties to these transactions that negotiations may not be necessary);
- c. there is no reason to limit the search for a suitable vehicle to the "local" market; it can be a statewide search (which is made fairly easy in this era of internet shopping), such that the word "local" should be replaced by the word "statewide"; and
- d. it should be required that the charitable organization must enter into an arrangement with the financial institution to provide below-market financing, otherwise many of the advantages of the tax credit subsidy would be lost on high rate financing.

As a result, we recommend the following changes to this section:

§110-13FF-13. Duties of the qualified charitable organization.

13.1. The qualified charitable organization operating a program for distribution of vehicles under this rule shall assist program participants by:

13.1.1. Providing, for no consideration, or at a price below the fair market value and affordable to the program participant, a suitable vehicle from the qualified charitable organization's stock or inventory of donated vehicles; or

13.1.2. If the participant chooses to purchase a vehicle deemed suitable by the qualified charitable organization through a dealer, ~~no suitable donated vehicle is available,~~ the qualified charitable organization shall:

13.1.2.a. Guide the program participant in locating a suitable vehicle for purchase within the ~~local~~ statewide new or used car market;

13.1.2.b. Negotiate with and on behalf of the program participant as necessary to obtain a suitable vehicle at a price determined to be affordable to the program participant by the qualified charitable organization;

13.1.2.c. Negotiate with and on behalf of the program participant as necessary to obtain below-market financing from a cooperating financial institution for the purchase of a vehicle determined to *be* suitable for the program participant by the qualified charitable organization.

13.2. Qualified charitable organizations shall enter into agreements with cooperating financial institutions to provide below-market financing for the purchase of suitable vehicles for program participants.

Response:

The State Tax Division has made this change in the agency adopted rule.

Summary

All of the changes suggested by the WVADA and the GNMG have been made in the agency adopted rule.

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